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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,581	10/20/2003	Xavier Blin	231036US0	2539
22850	7590	04/16/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
KANTAMNINI, SHOUBHA				
ART UNIT		PAPER NUMBER		
1617				
NOTIFICATION DATE		DELIVERY MODE		
04/16/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/687,581

**Applicant(s)**

BLIN ET AL.

**Examiner**

Shobha Kantamneni

**Art Unit**

1617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE;  
Claim(s) objected to: \_\_\_\_\_;  
Claim(s) rejected: 1-17, 26-30 and 32;  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See page 2.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/SREENI PADMANABHAN/  
Supervisory Patent Examiner, Art Unit 1617

Continuation of 11:

Applicant's arguments have been considered, but not found persuasive. The rejection of claims 1-17, 26-30, and 32 under 35 U.S.C. 103(a) as being unpatentable over Lagrange (US 6,123,952, PTO-892), in view of Clark et al. (WO 99/31081, PTO-1449) is MAINTAINED

Response to Arguments:

Applicant argues that "one skilled in the art would not have been motivated to place one of Clarke's reversible dyes into Lagrange's compositions which require the presence of irreversible dyes. To make such a substitution would render Lagrange's compositions unsuitable for their intended purpose." These arguments have been considered, but not found persuasive because 1) Lagrange broadly teaches the use of organic photochromic compounds such as spiropyran or naphthoxazine in make-up or hair compositions to give novel coloring effects, see column 1, lines 6-10, lines 39-42, line 63-column 2, line 3, and 2) Clark teaches that the photochromic dyes therein which read on instant photochromic organic dye may be used to impart different colors to a solution, matrix or host material. Accordingly, one of ordinary skill in the art at the time of invention would have been motivated to employ the photochromic organic dyes taught by Clark et al. in a cosmetic composition with reasonable expectation of obtaining a make-up or hair compositions with desirable coloring effects.

Applicant argues that "Clarke neither teaches nor suggests dissolving the required dye in the oily phase. Rather, Clarke teaches away from such dissolution, stating that his dyes are incorporated into polymeric materials. (See, page 5, 2nd and 3rd paragraphs)." These arguments have been considered, but not found persuasive because Clark broadly teaches that the photochromic dyes therein which read on instant photochromic organic dye may be used to impart different colors to a solution, matrix or host material. See page 6, paragraph 2 from bottom.